

PLEASE NOTE:

This copy of Ordinance No. 240.4 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: 240.4

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS
AMENDING CHAPTER 6 OF TITLE VIII OF THE MILPITAS MUNICIPAL
CODE RELATING TO SUPPLEMENTAL WATER USE**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of _____, upon motion by _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Christopher Diaz, City Attorney

RECITALS AND FINDINGS:

WHEREAS, on April 1, 2015, the Governor of California issued an Executive Order requiring a Statewide mandatory reduction of potable water usage by twenty-five percent (25%) with enforcement regulations due to severe drought conditions; and

WHEREAS, on May 5, 2015, the State Water Resources Control Board adopted additional emergency regulations for Statewide urban water conservation requiring water retailers to implement additional conservation measures as part of its Water Shortage Contingency Plan; and

WHEREAS, on June 16, 2015, the City Council of the City of Milpitas declared the continuation of a water shortage for the year 2015 (Stage 2 of the Milpitas Water Shortage Contingency Plan) and added additional conservation measures as required by State law; and required the community to implement water conservation measures with a goal of reducing consumption by thirty percent (30%); and

WHEREAS, on June 16, 2015, the City Council of the City of Milpitas adopted Urgency Ordinance No. 240.3, amending Chapter 6 of Title VIII of the Milpitas Municipal Code to include penalties for customers who fail to limit their water use;

WHEREAS, the City never implemented the penalty water rates repealed by this Ordinance; and

WHEREAS, in the case of *Capistrano Taxpayers Association, Inc. v. City of San Juan Capistrano* the Court ruled that penalty rates for excessive water usage above-the-cost-of-service for the water may violate the requirements of Proposition 218 so that the City's penalty rates are likely to be unacceptable and they will be repealed prior to implementation by adoption of this Ordinance.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE

Sections 7, 8 and 9 of Chapter 6 of Title VIII of the Milpitas Municipal Code are hereby amended to read as follows:

~~VIII 6 7.00—Drought Penalties~~

~~7.01 Residential Properties~~

~~a.—The following penalties will be imposed to residential customers who fail to limit their use:~~

Residential Water Tiers	FY15/16 Rate	Penalties
1.0—10 hcf	\$3.62	No Penalty

2. >10 — 20 hef	\$4.80	No Penalty
3. >20 — 30 hef	\$6.47	No Penalty
4. >30 hef	\$7.30	+10 %

FY = Fiscal Year

1 hef = One hundred cubic feet = 748 gallons

7.02 Commercial, Industrial and Institutional Properties

- a. ~~Commercial, industrial, and institutional accounts shall be assigned water allotments equal to 90 percent of their usage during the same billing period in calendar year 2013. The following penalties will be imposed to commercial, industrial and institutional customers who fail to limit their use within the assigned allotment:~~

	FY15/16 Rate	Penalty
Commercial/Industrial/Institutional/Construction Meter	\$7.30	+10%

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FY = Fiscal Year

1 hef = One hundred cubic feet = 748 gallons

7.03 Irrigation Accounts

- a. ~~Irrigation accounts shall be assigned water allotments equal to 50 percent of their usage during the same billing period in calendar year 2013. The following penalties will be imposed to irrigation customers who fail to limit their use within the assigned allotment:~~

	FY 15/16 Rate	Penalty
Irrigation (potable)	\$7.30	+10%

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FY = Fiscal Year

1 hef = One hundred cubic feet = 748 gallons

~~7.04 The Drought Penalties set forth in this Section will be imposed in addition to the customer's normal rates charged pursuant to Section VIII 1 6.13 of the Municipal Code, as may be amended.~~

~~7.05 The Director of Engineering is authorized to assign allotments for water accounts that did not exist in 2013 or had a change in land use based on review of similar types of properties and uses.~~

~~7.06 The FY 15/16 water rates are shown here for convenience only and the real values shall be as set forth in Section VIII 1 6.13 of the Municipal Code, as may be amended.~~

VIII-6-~~87~~.00 - Non-Compliance

Any violation of this Chapter shall be subject to the penalties provision set forth in Section I-1-4.09 (Penalty Provision), Section ~~VI-50021-8.00~~ (Administrative Citation), Section VIII-1-6.10 (Discontinuance of Service), Section VIII-1-6.11 (Restoration of Service), or any other penalty provisions in the Municipal Code or State law.

VIII-6-~~98~~.00 - Applicability

The prohibitions and rationing requirements identified in this Chapter are not applicable to fountains, irrigation systems, cooling towers, and dual-plumb sites that use non-potable water such as recycled water.

SECTION 3. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 4. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.